

Remarks

Status of the Claims

Claims 1-9 are pending in this application and are subject to a Restriction Requirement. Claims 1 and 4 are amended to correct matters of form. After entry of this paper, **claims 1-9 are pending.**

Restriction Requirement

The current Restriction Requirement alleges that there are **three** inventions encompassed by the pending claims, as defined by Examiner's Groups I-III. Two of the Examiner's Groups (I and II) are directed to "a method of obtaining a plant that overexpresses ANT1" (Office action at page 2). Groups I and II are differentiated by the plant overexpressing ANT1 being either "a transgenic plant" or "a mutant plant."

Applicants point out that the method claims pending in this application are directed to "a method of obtaining flavonoids" and are not directed to a method of obtaining a plant, as suggested by the Restriction Requirement. Applicants note that the recitation "obtaining a plant that overexpresses ANT1" is, in fact, a step of the method of claim 1. With this in mind, Applicants submit that Groups I and II are directed to single invention (a method of obtaining flavonoids) and respectfully request that Groups I and II be rejoined.

Moreover, Applicants submit that claim 1 is, in fact, a generic claim, directed to a "method of obtaining flavonoids comprising obtaining a plant that overexpresses ANT1 compared to wild-type plants, and extracting a flavonoid from the plant" (emphasis added). Applicants further submit that the species within the class of a plant that overexpresses ANT1 are set forth in pending claims 2 and 3 as a transgenic plant and a mutant plant, respectively. Thus, the restriction of claims 1-8 into different Inventions is not proper.

M.P.E.P. 806.04(e) states that "a claim may encompass two or more of the disclosed embodiments (and thus be designated a *generic or genus claim*). *Species always refer to the different embodiments of the invention.*" Applicants respectfully request that the Examiner

identify claim 1 as a generic claim directed to a method of obtaining flavonoids comprising obtaining a plant that overexpresses ANT1, and reclassify the alleged “inventions” of Groups I-II (relating to a transgenic plant and a mutant plant) as species of the generic claim. If the Examiner reclassifies the inventions to be species, Applicants hereby elect, with traverse, claims 1-8 directed to a method of obtaining flavonoids comprising obtaining a plant that overexpresses ANT1 and further elect the species “a transgenic plant.”

Applicants take the opportunity to remind the Examiner that, as set forth in M.P.E.P. §809.02(a), “[u]pon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all of the limitations of an allowed generic claims as provided by 37 CFR 1.141.”

Election

Under protest, and only to comply with 37 CFR §1.499, Applicants hereby elect, with traverse, Examiner’s Group I (claims 1-8) drawn to a method of obtaining a plant that overexpresses ANT1, wherein said plant is a transgenic plant.

Miscellaneous Matters

Page three of the Restriction Requirement discusses the requirement to select a single nucleotide sequence. Applicants note, however, that the claims do not refer to specific nucleotide sequences and the Office action does not refer to any such sequences. Thus, Applicants submit that the requirement to select a nucleotide sequence is incorrect.

Conclusion

It is believed that the application is in condition for substantive examination. If any minor matters remain to be addressed prior to examination, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, Oregon 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301

By /Anne Carlson/
Anne Carlson, Ph.D.
Registration No. 47,472